Susan Gauthier

From: Karena McGee Shackelford
Sent: Tuesday, January 05, 2016 4:06 PM
To: Susan Gauthier
Subject: FW: Medical Cannabis Ordinance
Attachments: image001.png

From: Denise [mailto:dkbrew@aol.com]
Sent: Tuesday, January 05, 2016 2:05 PM
To: bharrison@fremont.gov; lmei@fremont.gov; schan@fremont.gov; vbacon@fremont.gov; rljones@fremont.gov
Subject: Medical Cannabis Ordinance

Dear Mayor Harrison and City Council Members,

Please read the information provided below before considering your decision regarding the medical cannabis ordinance on the agenda tonight. Denying legal patients access to legal medical cannabis in your city only puts it out to the black market where patients have no guarantee of safe quality medicine.

Also please keep in mind that it is not imperative to place an ordinances in effect prior to March 1, 2016. That was not the intent of the new law. See the attached letter from Assembly Member Jim Wood (an author of the new cannabis laws) addressed to County and City Government Officials.

https://d3n8a8pro7vhmx.cloudfront.net/americansforsafeaccess/pages/8467/attachments/original/1450470076/MMRSA_memo_local_govt.pdf?1450470076

http://www.canorml.org/woodsletter.pdf
http://www.canorml.org/news/Gov_Brown_Supports_Fix_to_MMRSA_Deadline

Regards,
Denise Martellacci
President Alameda County Brownie Mary Democratic Club

AmericansFor SafeAccess
Advancing Legal Medical Marijuana Therapeutics and Research

TO: City Councils and County Boards of Supervisors in California
DATE: December 21, 2015
RE: Local Government and the Medical Marijuana Regulations and Safety Act (MMRSA)

Key Points

1. The Medical Marijuana Regulation and Safety Act (MMRSA) gives cities and counties a clear indication of what is legal under state law and empowers them to license and regulate commercial medical cannabis activity.
2. While implementation of the MMRSA will take some time, cities and counties can begin the process of necessary local licensing now.
3. Some provisions of the MMRSA affect cities and counties directly.
4. Local bans on personal patient cultivation and commercial medical cannabis cultivation are unnecessary and harmful.

Background

California voters legalized medical cannabis (marijuana) when they approved the Compassionate Use Act (Proposition 215) in 1996. Codified as Health and Safety Code Section 11362.5, the voter initiative calls on lawmakers "to implement a plan to provide for the safe and affordable distribution" of medical cannabis.

Cities and counties have adopted a patchwork of local regulations related to medical cannabis since 1996. Until recently, however, state lawmakers were reluctant to adopt statewide licensing and regulations for medical cannabis activity. In that legal vacuum, some cities and counties began to experiment with regulations for local access programs to meet the needs of legal patients.

Most of the early local ordinances regulating medical cannabis focused on safety, preventing diversion of medicine, and land use issues around local access points (often called *dispensaries*). Local lawmakers did not address issues regarding cultivation, manufacturing, or laboratory testing in these early ordinances. Many cities and counties

remained ambivalent about licensing or regulating medical cannabis activity in the absence of clear guidance from the state.

Governor Brown signed the Medical Marijuana Regulation and Safety Act (MMRSA) on October 9, 2015, finally bringing some clarity under state law as to the rights and responsibilities of businesses, organizations, and individuals in the field of medical cannabis. The adoption of the MMRSA presents a unique opportunity for cities and counties to revisit their policies regarding commercial medical cannabis activity and bring local ordinances into harmony with this groundbreaking legislation.

Americans for Safe Access (ASA), the nation's leading medical cannabis patient advocacy organization, works in partnership with elected officials at all levels of government to overcome barriers to safe and legal access to medical cannabis for therapeutic use and research. We would like to help cities and counties in California adopt local licensing laws that protect legal patients, reduce crime and complaints, and assist law enforcement in identifying legal medical cannabis businesses and organizations.

The Medical Marijuana Regulation and Safety Act (MMRSA)

Three separate bills comprise the MMRSA – AB 243, AB 266, and SB 643. Each deals with different aspects of licensing and regulating commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing. The MMRSA is a milestone in California medical cannabis law, because it will create the first legal state licensing for businesses and organizations that are specifically authorized to provide medical cannabis (cultivation, manufacturing, dispensing) and industry support services (testing, transportation) in California.

The MMRSA becomes effective January 1, 2016. The Act creates the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs to write regulations and oversee licensing. The new law also puts the Department of Food and Agriculture in charge of writing regulations for medical cannabis cultivation. The Department of Health will write regulations for edible preparations of cannabis. The Department Fish and Wildlife and the State Water Board are charged with writing rules for commercial cultivation that protect water quality.

It may take months for the new BMMR to organize and begin operating as a regulatory agency. The other state agencies will also need some lead-time to get started on this unprecedented work. While the MMRSA is effective on January 1, 2016, the

requirement that medical cannabis businesses and organizations obtain both a state and local license to operate does not become effective until January 1, 2018. For a detailed look at the timeline and deadlines in the MMRSA, see Table 1 at the end of this memorandum.

The MMRSA creates seventeen different state medical cannabis licenses. The Act also contains complicated restrictions designed to prevent vertical integration in the medical cannabis industry. In most circumstances, licensees are limited to holding licenses in two categories. (See Table 2 for details about different state licenses.)

It is important to note that: (1) cities and counties do not have to duplicate the state license types in local ordinances (see more below), and (2) medical cannabis businesses or organizations operating in cities and counties that adopted ordinances requiring or allowing vertical integration ("closed-loop" system) before July 1, 2015, are generally exempt from the MMRSA's restrictions on holding more than two types of licenses.

The MMRSA contains numerous other provisions, some of which affect local government. See Table 3 for a concise summary of the Act's provisions prepared by Dale Gieringer, Ph.D., from CA NORML. The full text of each bill, including the Legislative Counsel's Digest, is available on the LegInfo website at http://leginfo.legislature.ca.gov.

The MMRSA and Local Government

The MMRSA gives local government broad latitude in regulating medical cannabis activity. In fact, preserving local authority was a top priority for the authors of the bills that comprise the MMRSA.

- Authorized medical cannabis license applicants in cities and counties with existing local ordinances that require or allow for "closed loop" patients' cooperatives and collectives, in accordance with California Health and Safety Code Section 11362.775, may continue to operate under the local ordinance until January 1, 2026 (AB 266, Section 19328). That means no disruption for existing program authorized under local law for ten years.
- Applicants for state medical cannabis licenses must also obtain a license, permit, or approval from the city or county in which they are operating or propose to operate [AB 266, Section 1932(a) and AB 243, Section 1362.777(b)].
- Existing medical cannabis business and organizations operating with local approval may continue to operate until their state license is approved or denied.

- If a city or county does not address commercial medical cannabis cultivation in an ordinance before March 1, 2016, state regulators will become the sole licensing authority. See below for more details on this provision [AB 243, Section 11362.777(c)(4)].
- **Assembly Member Jim Wood (D-Santa Rosa), the author of AB 243, stated in an open letter to local lawmakers in December of 2015, that the March 1, 2015, deadline for adopting local ordinances was the result of "an inadvertent drafting error." The Assembly Member noted this error in the Assembly Journal, the official record of the Assembly, and is already engaged in a bipartisan effort to remove the deadline. The Assembly Member concludes his letter to local lawmakers by saying, "I am confident that my colleagues and I will eliminate the March 1st deadline before it becomes a realistic problem as opposed to a theoretical concern for lawmakers." The letter is attached, following the tables, at the end of the memorandum.**

Bans on Personal and Commercial Medical Cannabis Cultivation

Some cities and counties have banned the personal and commercial cultivation of medical cannabis since the adoption of the MMRSA. This is an unnecessary step that is harmful to patients and may deprive the cities and counties of the proven benefits of regulation. ASA urges local lawmakers to remember that cannabis is a legitimate medicine that can and should be properly licensed and regulated under state and local law. It is not a vice or a nuisance. Furthermore, ASA urges local lawmakers to consider the jurisdictions posture towards personal and commercial cultivation as *separate* issues.

<u>There is a legitimate need for local access to medical cannabis.</u>

1. **Many Californians already use medical cannabis, and most report relief from a serious medical condition.** Research shows that more than 1.4 million Californians have used medical cannabis already, and 92% of those report significant relief from a serious medical condition. The most commonly treated conditions include chronic pain, arthritis, migraines, and cancer – conditions for which conventional treatments are often unavailable or ineffective. Furthermore, research shows that cannabis is used by a population that is diverse in age, race, gender, and other factors ["Prevalence of medical marijuana use in California, 2012," *Drug and Alcohol Review* (2014)]. Given that so many Californians are already using medical cannabis to treat serious conditions, it is

certain that legal patients who live, work, and shop in your community have a need for safe and legal access already.

2. **Mounting scientific evidence confirms that cannabis and cannabis products are safe and effective.**
    a. The University of California established the Center for Medical Cannabis Research (CMCR) in 2001 to conduct scientific studies to ascertain the general medical safety and efficacy of cannabis products and examine alternative forms of cannabis administration. In 2010, the CMCR issued a report on the fourteen clinical studies it has conducted, most of which were FDA-approved, double-blind, placebo-controlled clinical studies that have demonstrated that cannabis can control pain, in some cases better than the available alternatives (Grant I, et al. 2010. *Report to the Legislature and Governor of the State of California*. Center for Medicinal Cannabis Research).
    b. The Institute of Medicine released the largest review of research on medical cannabis in its 1999 report *Marijuana and Medicine: Assessing the Science Base*. The report found medical benefits for treating cancer and other conditions, noted that cannabis was uniquely effective for some patients, and called for more research. Read the report at http://www.nap.edu/read/6376/chapter/1
    c. See http://www.safeaccessnow.org/research for additional information about clinical research related to medical cannabis and specific conditions.

Recommendation: License and regulate medical cannabis at the local level like other legitimate medicines. Lawmakers must remember that it is inappropriate to regulate legitimate medicines as they do vices, including alcohol and tobacco.

Bans on individual patient and primary caregiver cultivation.

1. **Bans on individual patient and primary caregiver cultivation are harmful to patients.** Many patients who legally use medical cannabis cultivate their own medicine at home or in another safe and discrete place. Some designate a Primary Caregiver to help with cultivation, in accordance with California Health and Safety Code 11362.7. Personal, non-commercial cultivation of cannabis can be less expensive for patients than purchasing it. It may also be the only way to consistently obtain a specific variety of medicine that is useful for treating an individual patient's condition.

2. **Bans push legal patients into the illicit market.** Patients who cannot grow their own medicine may turn to the illicit market for relief, especially in areas where commercial medical cannabis cultivation and dispensing are not permitted. Patients face unnecessary legal, personal, and safety risks in the illicit market. Eliminating those risks for patients was a primary motive for adopting medical cannabis laws in California.
3. **Bans on personal cultivation are not required under the MMRSA.** The new state law does not forbid individual patients and their designated primary caregivers from cultivating medical cannabis for the personal use of the patient. In fact, the MMRSA specifically exempts individual patients and primary caregivers from licensing and regulation requirements. Some cities and counties have banned commercial medical cannabis cultivation in hopes of maintaining control over licensing cultivation under the MMRSA, as discussed in greater detail below. However, there is no requirement or deadline for local government to ban, license, or regulate the personal cultivation of patients and caregivers. *The issues of commercial and personal medical cannabis cultivation can and should be handled separately.*
4. **Personal cultivation is not usually associated with criminal or nuisance activity.** Some cities and counties have banned commercial cultivation and dispensing of medical cannabis based on an unfounded belief that this activity increases crime (see more below). However, it is important to remember that there is no evidence that the personal cultivation of legal medical cannabis is associated with increased criminal nuisance activity.

Recommendation: Allow medical cannabis patients and primary caregivers to cultivate medicine for the personal use of the patient. ASA's model ordinance for regulating commercial medical cannabis cultivation exempts patients and primary caregivers from local licensing regulation and does not interfere with their right to cultivate for personal use under the Compassionate Use Act of 1996 (Proposition 215).

<u>Bans on commercial medical cannabis cultivation.</u>

1. Banning commercial cultivation leaves the majority of legal patients without safe and legal access. Most legal patients rely on dispensaries for safe and legal access to medical cannabis. The MMRSA anticipates that licensed commercial cultivators will supply licensed dispensaries with medical cannabis. However, cultivators and dispensaries must have a local license,

permit, or approval to operate. That means local bans on commercial cultivation could choke off access to dispensaries servicing legal patients.

2. Cities and counties are empowered to regulate commercial medical cannabis cultivation under the MMRSA. One of the goals of the new legislation is to give the green light for local licensing and regulation. The MMRSA should give clear legal guidance and approval to local lawmakers who were previously ambivalent about local licensing. Cities and counties can now be certain that licensed medical cannabis businesses and organizations are operating within the bounds of state law.
3. There is no urgency to enact an ordinances licensing commercial medical cannabis cultivation before the March 1, 2016. As noted above, the inclusion of a deadline for adopting local cultivation regulations was included in AB 243 inadvertently. The current language in Section 11362.777 (c)(4) in AB 243, which includes the drafting error identified by Assembly Member Wood in the Assembly Journal, gives the BMMR authority to license medical cannabis cultivation in cities and counties that have not addressed commercial cultivation before March 1, 2016. While the delaine is likely to be removed from AB 243, cities and counties can adopt simple business licensing ordinances like ASA's model ordinance for commercial medical cannabis activity before March 1, 2016.
4. Cities and counties can use existing business license and zoning laws to license commercial medical cannabis activity. Most jurisdictions already have adequate business license, zoning, and other land use laws that can be used for medical cannabis. There is no need to reinvent the wheel.
5. Cities and counties do not have to develop complex regulatory schemes for commercial medical cannabis licensing. The BMMR will be doing that. The BMMR and other state agencies will begin writing comprehensive regulations in January of 2018. All state laws and regulations will be applicable to medical cannabis businesses and organizations licensed, permitted, or approved under local laws.
6. Unlike illicit cultivation, licensed and regulated commercial medical cannabis cultivation can be easily monitored and policed. Licensed commercial medical cannabis cultivators operate in the open. That makes the job of regulators and law enforcement much easier. Cities and counties can expect greater transparency from licensed cultivators in areas like security, zoning, and environmental impacts.
7. Licensed commercial medical cannabis cultivation can create jobs, generate tax revenue, and have other economic benefits for the community.

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> Researchers from The ArcView Group, a cannabis industry investment and research firm based in Oakland, California, found that the U.S. market for legal cannabis grew 74 percent in 2014 to $2.7 billion, up from $1.5 billion in 2013. According to the *Washington Post*, the cannabis industry will be worth $35 billion by 2020 – bigger than the National Football League and on par with the newspaper industry. That means jobs and tax revenue for local governments that take advantage of the new state licensing to authorize legal medical cannabis organizations and businesses.

Recommendation: License and regulate commercial medical cannabis cultivation instead of banning it. ASA's model ordinance for commercial medical cannabis cultivation is a simple way to preserve local authority and secure the benefits of sensible licensing and regulation for patients, the community at large, and law enforcement.

Conclusion

ASA is committed to helping cities and counties find the best possible solution for licensing commercial medical cannabis activity, while protecting the interests and welfare of legal patients. We strongly believe that cities and counties should move forward with licensing, permitting, or approving medical cannabis activity pursuant to the MMRSA. Banning personal patient cultivation or commercial medical cannabis cultivation is harmful to legitimate patients. It may also deprive communities of the proven benefits of sensible regulation: reduced crime, fewer complaints, greater clarity for all stake holders (especially law enforcement), tax revenue, and more.

Please contact ASA California Director Don Duncan at don@safeaccessnow.org or (916) 449-3975 for more information.

List of Tables:

Related Documents from ASA:

Sample Ordinance Licensing Commercial Medical Cannabis Cultivation
http://www.safeaccessnow.org/ca_local_cultivation_ordinance

Report: Where Will Medical Marijuana Patients Obtain Their Medicine?
https://american-safe-access.s3.amazonaws.com/documents/dispensary_report_2015.pdf

Additional Resources from ASA:
http://www.safeaccessnow.org/resources_for_local_organizers

Table 1 – Timeline and Deadlines in MMRSA

7/1/2015	Date by which those claiming vertical integration had to be operating a vertically integrated business. (AB 266 Section 19328 (c1))
1/1/2016	Date on which AB 266, AB 243 and SB 643 will take effect. (See the end of the legislative summaries in all three bills)
1/1/2016	Date by which cannabis businesses must be operating to be eligible for priority licensing. "In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016." [AB 266 Section 19321 (c)]
3/1/2016	Date by which cultivation must be regulated by a locality: "If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county." (AB 243 Section 19362.777(c)(4)) **NOTE: According to the author, this provision was included as a result of a drafting error and will be removed.**
1/1/2017	By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a licensee. (AB 266 Labor Code Amendment Sec. 7 147.5)
7/1/2017	By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. (AB 266 Labor Code Amendment Sec. 7 147.5)
7/1/2017	By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section. (AB 266 Labor Code Amendment Sec. 7 147.5)
1/1/2018	"A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter." (AB 266 Section 19321 (c))
1/1/2020	Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the Bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program. [SB 643 Section 19332.5(a)]
1/1/2022	Date by which the loan of up to $10,000,000 from the general fund to establish the Medical Marijuana Regulation and Safety Act has to be repaid. If the fees collected by that time don't repay the loan, they will begin using funds that come from imposing penalties to repay the loan. [AB 243 Section 19351 (b)(1)]

3/1/2023	Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report on the authority's Internet Web Site. (AB 266 Section 19353)
1/1/2026	The date Type 10A Paragraph on licensing becomes inoperative "A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses are valid… This paragraph shall become inoperative on January 1, 2026." [(AB 266 Section 19328 (a) (9)]
1/1/2026	Date vertical integration section of AB 266 is repealed. [AB 266 Section 19328 (d)]

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Table 2 – Types of State Licenses Under the MMRSA

Type 1	Cultivation; Specialty outdoor. Up to 5,000 square ft of canopy, or up to 50 noncontiguous plants.
Type 1A	Cultivation; Specialty indoor. Up to 5000 sq ft.
Type 1B	Cultivation; Specialty mixed-light. Using exclusively artificial lighting.
Type 2	Cultivation; Outdoor. Up to 5000 sq ft, using a combination of artificial and natural lighting.
Type 2A	Cultivation; Indoor. 5001 -10,000 sq ft.
Type 2B	Cultivation; Mixed-light. 5001 -10,000 sq ft.
Type 3	Cultivation; Outdoor. 10,001 sq ft - 1 Acre.
Type 3A	Cultivation; Indoor.. 10,001 - 22,000 sq ft.
Type 3B	Cultivation; Mixed-light. 10,001 - 22,000 sq ft.
Type 4	Cultivation; Nursery.
Type 6	Manufacturer 1 for products not using volatile solvents.
Type 7	Manufacturer 2 for products using volatile solvents.
Type 8	Testing.
Type 10	Dispensary; General.
Type 10A	Dispensary; No more than three retail sites.
Type 11	Distribution.
Type 12	Transporter.

Table 3 – Summary of the Provisions of the MMRSA

CULTIVATION SIZE LIMITATIONS	The maximum allowable size is 1 acre (43,560 sq ft) outdoors (Type 3) or 22,000 sq ft indoors (Type 3A and 3B licenses). The DFA is directed to limit the number of Type 3, 3A and 3B licenses. [AB 243, 19332(g)].
VERTICAL INTEGRATION	There are complicated restrictions to prevent vertical integration (AB 266, 19328). In general, licensees can only hold licenses in up to two separate categories. Small cultivation licensee Types 1-2 may hold manufacturing or Type 10A retail licenses (limited to three dispensaries). It appears that Types 3-4 licensees can't apply for manufacturing licenses at all. However, Type 10A licensees can apply for both manufacturing and cultivation licenses, provided their total cultivation area doesn't exceed 4 acres. Also, facilities in jurisdictions that require or permit cultivation, manufacture, and distribution to be integrated as of July 1, 2015, may continue to operate that way until Jan 1, 2026.
DISTRIBUTORS REQUIRED	Type 11 distributors are a new kind of entity that has been created to regulate the flow of products. ALL cultivation and manufacturing licensees are required to send their products to a Type 11 licensee for quality insurance and inspection before passing them to the next stage of manufacturing or retailing. The Type 11 licensee in turn submits the product to a Type 8 laboratory for batch testing and certification. Afterwards, the sample returns to the Type 11 distributor for final inspection and execution of the contract between the cultivator and manufacturer or manufacturer and retailer. The Type 11 distributor charges a fee that covers the testing plus any applicable taxes (the Act doesn't impose any new taxes, but anticipates that could happen in the near future) (AB 266, 19326) Type 11 distributors and Type 8 testing facilities cannot hold any other kind of licenses (however, licensees may have their own labs for in-house testing).
LOCAL PERMITS REQUIRE	No person shall engage in commercial activity without BOTH a state license and a license, permit, or other authorization from their local government. (AB 266, 19320(a); AB 243, 11362.777 (b)).
LAWFUL ACTS	Actions by licensees that are permitted by both a state license and local government are lawful, and the licensee is protected from arrest, prosecution, or other legal sanctions (AB 266, 19317).
GRANDFATHERING	Facilities already operating in compliance with local ordinances and other laws on or before Jan 1, 2018 may continue to operate until such time as their license is approved or denied. [AB 266, 19321(c)]. Facilities in operation before Jan 1, 2016, shall receive priority. Los Angeles may in any case continue to prosecute violations of Measure D.

APPLICANT QUALIFICATIONS (SB 643, 19322):	Applicants must provide proof of local approval and evidence of legal right to occupy any proposed location. Applicants shall submit fingerprints for DOJ background check. Cultivation licensees must declare themselves "agricultural employers" as defined by Alatore-Zenovich-Dunlap-Berman Agricultural Labor Relations Act. A licensing authority MAY deny an application if the applicant has been convicted of an offense substantially related to qualifications, including ANY felony controlled substance offense, violent or serious felonies, or felonies involving fraud, deceit or embezzlement, or any sanctions by a local licensing authority in the past 3 years [SB 643, 19323(a)(5)].
FOR-PROFIT ENTITIES	Are implicitly allowed under the qualifications established above. These were previously "not authorized" under SB 420, but the new licensing provisions extend to individuals, partnerships, corporations, business trusts, etc. [under the definition of "person" in AB266, 19300.5 (a)]. Likewise, applicants no longer need be patients.
CULTIVATION LICENSING	The DFA shall establish a medical cannabis cultivation program. All cultivation is subject to local land use regulations and permits. In cities and counties without cultivation regulations of their own, the state shall be the sole licensing authority as of March 1, 2016 [AB 243, 11362.777 (c)(4)]. **NOTE: According to the author, this provision was included as a result of a drafting error and will be removed.**
TRACK & TRACE PROGAM	The DFA shall implement a unique identification program for all marijuana plants at a cultivation site, to be attached at the base of each plant. The information shall be incorporated into a "track and trace" program for each product and transaction [SB 643, 19335 and AB 243, 11362.777 (e)]. Cultivation in violation of these provisions is subject to civil penalties up to twice the amount of the license fee, plus applicable criminal penalties. Fines enacted daily for each violation (SB 243, 19360).
PATIENT EXEMPTION	Qualified patients are exempt from the state permit program if cultivating less than 100 square feet for personal medical use. Primary caregivers with five or fewer patients are allowed up to 500 square feet [AB 243, 11362.777(g) and SB 643, 19319]. Exemption under this section does not prevent a local government from further restricting or banning the cultivation, provision, etc. of medical cannabis by individual patients or caregivers in its jurisdiction (AB 243).
DELIVERIES	Cannabis may be delivered to qualified patients only by dispensaries and only in cities or counties where not prohibited by local ordinance. All deliveries are to be documented. No locality can bar transport of delivered products through its territory. Local county may tax deliveries. (AB 266, 19340). {In a separate section [19334 (a) 4] it is confusingly stated that dispensers who have no more than three dispensaries (Type 10A) shall be allowed to deliver "where expressly authorized by local ordinance." It's unclear what conditions if any apply to other, Type 10 licensed dispensers.}
MANUFACTURERS	Manufacturers are to be licensed by DPH. The DPH shall limit the number of Type 7 licenses that produce products using volatile solvents.

TESTING (AB 266, 19341-6)	The DPH shall ensure that all cannabis is tested prior to delivery to dispensaries or other businesses, and specify how often such testing shall be conducted. [Confusingly, 19346(c) says the costs of testing are to be paid by cultivators, whereas 19326(c) (3) states that distributors shall charge for the costs of testing; since distributors serve manufacturers as well as cultivators, it doesn't make sense that testing costs for the former should be charged to the latter.] Licensees shall use standard methods established by International Organization for Standardization approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (AB 266, 19342). Licensees shall test for cannabinoids, contaminants, microbiological impurities, and other compounds spelled out in Section 19344. Licensees may conduct tests for individual qualified patients, but not certify products for resale or transfer to other licensees.
SCHOOL ZONES	Cultivation and dispensary facilities must be at least 600 ft from schools (with grandfathered exceptions specified in HSC 11362.768). [SB 643, 19322 (a) 4]
TRANSPORTATION	Only licensed transporters can transport cannabis or cannabis products between licensees [AB 266, 19326(a)]. The bill doesn't specify whether cultivators, manufacturers, or retailers can also have transport licenses, but 19328 (a) states they can generally have at most two separate kinds of licenses. Licensed transporters shall transmit an electronic shipping manifest to the state and carry a physical copy with each shipment (SB643, 19337).
LABOR PEACE AGREEMENTS	Labor peace agreements are required of all applicants with 20 employees or more (SB 643, 19322 a (6))
PACKAGING	Products shall be labeled in tamper-evident packages with warning statements and information specified in Section 19347.
PRIVACY	Identifying names of patients, caregivers, and medical conditions shall be kept confidential. (AB 266, 19355)
SB 420 COLLECTIVE DEFENSE SUNSET	The provision in SB 420 affording legal protection to patient collectives and cooperatives, HSC 11362.775, shall sunset one year after the Bureau posts a notice on its website that licenses have commenced being issued. After that date, all cannabis collectives will have to be licensed, except for individual patient and caregiver gardens serving no more than five patients.
PHYSICIAN RECOMMENDATIONS (SB 643):	There are several new provisions clarifying the duties of medical cannabis physicians; however, they don't substantially affect or impair patients' current access to medical recommendations.
	• The Med Board's enforcement priorities are amended to include "Repeated acts of clearly excessive recommending of cannabis for medical purposes, or repeated acts of recommending without a good faith prior exam." (SB 643, 2220.05). This is
	identical to existing language regarding controlled substances, which has generally been assumed to apply to MMJ heretofore.
	• It is unlawful for physicians who recommend to accept, solicit, or offer remuneration to or from a licensed facility in which they or a family member have a financial interest.
	• The Med Board shall consult with the California Center for Medicinal Cannabis Research in developing medical guidelines for MJ recs.

	• The recommending person shall be the patient's "attending physician" as defined in HSC 11362.7(a). Contrary to popular misconception, this in nothing new and in no way limits patients to their primary care physician. It merely restates current language in SB 420.
	• Physician ads must include a warning notice that MMJ is still a federal Schedule I substance.
PESTICIDE STANDARDS	Pesticide standards shall be promulgated by DFA and the Dept. of Pesticide Regulation (SB643, 19332).
ORGANIC CERTIFICATION	Organic certification will be made available by DFA by Jan 1, 2020, federal law permitting. [SB643, 19332.5(a)]
APPELLATIONS OF ORIGIN	The bureau MAY establish appellations of origin for cannabis grown in California. No product may be marketed as coming from a county where it was not grown. [SB643, 19332.5(b-d)]
FEES and FUNDING	Each licensing authority shall establish a scale of application, licensing and renewal fees, based upon the cost of enforcement. Fees shall be scaled dependent on the size of the business [AB 243, 19350 (c)]. A Medical Marijuana Regulation and Safety Act Fund is established in the state treasury to receive fees and penalties assessed under the act. $10 million is allocated to DCA to begin operations, with the possibility of an additional operating loan of $10 million from the General Fund (AB 243, 19352). The Bureau shall use the fund for a grant program to assist state and local agencies in enforcement and remediation of environmental impacts from cultivation. (AB 243, 19351)
COUNTY TAXATION	Counties may levy a tax on the cultivating, dispensing, producing, processing, distributing, etc., of medical cannabis subject to standard voter approval requirements. (Many cities already exercise this authority, but the authority of counties to do so has been unclear heretofore). (SB 643, 19348)

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The Marijuana Regulation and Safety Act's March 1st Deadline

An open letter to County and City Government Officials:

Like many of my colleagues, I began my public service career at the local level where decisions made in Sacramento often have a profound impact on the decisions we make in our communities. Over the past several weeks, I have learned that cities and counties are scrambling to put regulations regarding medical marijuana in place ahead of a March 1st deadline that was inadvertently included in AB243 of the Medical Marijuana Regulation and Safety Act (MMRSA). As a former local elected I understand this reaction. However, I am writing this letter to clarify some of the confusion that has resulted from the inclusion of the March 1st deadline in the MMRSA.

The MMRSA will bring a multi-billion dollar industry that has grown up largely in the shadows into the light. Ultimately, the goal is to provide Californians with the legal, consumer, and environmental protections we have come to expect from any other industry.

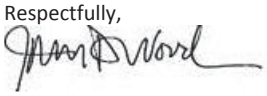
During the scramble at the end of the legislative session this year, an inadvertent drafting error placed a deadline on local jurisdictions, requiring them to adopt their own land use regulations for medical cannabis cultivation by March 1, 2016, or turn that responsibility over to the state. As soon as I was aware of the error I published a letter in the Assembly Journal, the official record of the Assembly, declaring my intention to pass urgency legislation as soon as the legislature reconvenes in January. The compromise agreement with the Governor's office did not include the March 1st deadline and this urgency legislation will ensure that the MMRSA's legislative intent is not altered. I have already amended one of my bills with language that will strike the deadline and maintain a local jurisdiction's ability to create their own regulations. As an urgency measure, the law will go into effect as soon as it is signed by the Governor.

My intent to remove the deadline has bi-partisan and stakeholder support. The Governor's office is prepared to partner with my office to ensure local control on this issue. I appreciate the Governor's acknowledgement of this drafting error and his office's willingness to work with me to quickly resolve the problem. Even if my urgency measure is not signed until after March 1st,

the Bureau of Medical Marijuana Regulation (BMMR), the entity responsible for developing the State's regulations, currently exists on paper only. It will be many months before the Bureau has the capacity to develop and enforce statewide regulations. Additionally we have received legal feedback confirming that once my urgency measure is in effect jurisdictions will retain the local control they need.

I am confident that my colleagues and I will eliminate the March 1st deadline before it becomes a realistic problem as opposed to a theoretical concern for local lawmakers.

Respectfully,



JIM WOOD
ASSEMBLYMEMBER, 2ND DISTRICT

Susan Gauthier

From: Karena McGee Shackelford
Sent: Tuesday, January 05, 2016 4:07 PM
To: Susan Gauthier
Subject: FW: January 5 Council Meeting: City Proposed Ban on Medical Marijuana

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From: David Bonaccorsi [mailto:dbonaccorsi@3blawfirm.com]
Sent: Thursday, December 31, 2015 5:12 PM
To: Lily Mei; Lily Mei
Subject: January 5 Council Meeting: City Proposed Ban on Medical Marijuana

Dear Vice Mayor Mei:

I do believe you generally watch our Planning Commission meetings. If you did not yet watch our Commission meeting on 12/10/15 concerning the City's proposed ban on all marijuana in Fremont, I encourage you to do so as we spent 2 hours (most in the form of questions from other members of the Commission and Commissioner comments on the rationale for the vote we took). I am expressing my own views and am not speaking for the entire Commission though I do report out directly to you what PC did which your Staff report verifies in some measure.

As the staff report indicates. Governor Brown signed into law, in October, 3 bills under the general heading as the Medical Marijuana Regulation and Safety Act (MMRSA). Staff did not provide the MMRSA to us in our packet nor do I believe the MMRSA was provided to Council. I looked up the MMRSA myself which does provide an important regulatory backdrop to better understand the options available to the City Council in authorizing something other than a complete ban as proposed. And, in my opinion, a more thorough review of the MMRSA would provide a needed context beyond the brief synopsis provided in the City Staff report before the Council can make a fully informed decision.

In 2006, the City Council banned dispensaries within the City of Fremont.

In 2014, over PC objection (4-3), the City Council unanimously adopted City Staff's recommendation to prohibit outdoor grows and limited cultivation to indoor grows not visible from the street or sidewalk or by a code enforcement officer (the "2014 Ordinance").

On December 10, 2015, Planning Commission has recommended to City Council a limited carve-out for a personal use exemption to a complete ban. The cultivation would be consistent with the existing ban by Council in the 2014 Ordinance limiting the personal use exemption to a grown of no more than 50 square feet by a "qualified patient" as defined by the MMRSA.

And PC also recommended City Council change our existing ordinance as authorized by the MMRSA to allow delivery via an app on a smart phone from an authorized dispensary outside the City limits since dispensaries are outlawed in Fremont.

The vote was 6-1 as Commissioner Leung was the only commissioner who wanted to support Staff recommendation without any carve-outs. (Also, I hope you received draft minutes from our PC meeting since it was not included in the posted online agenda packet. Prasanna said that those minutes would be sent to you.)

The MMRSA, as it relates to the role of Cities, involves either a two-tier State/City or State licensing scheme in the absence of City regulation. If the City has a regulatory scheme which already authorizes dispensaries and would authorize the use of *commercial* grows, the MMRSA would require a dispensary operator or commercial grower to obtain a license from the City before obtaining a State license. If the operator/grower does not obtain a City license, then it won't qualify for a State license. If the City has not regulated marijuana at all by 3/1/16 then the State, under the MMRSA as currently written, will be able to issue State licenses without first requiring a local license from a City for the dispensary operator/commercial grower conducting business in the City.

Importantly, and not mentioned in the Staff reports to either PC or Council (but one I brought to the attention of my fellow commissioners at the hearing and in questions posed before the hearing in an email exchange with Prasanna), ***there is a personal use exemption under the MMRSA to the licensing requirement***. Thus, as described below in my objections to staff proposal, the 3/1/16 deadline refers only to the licensing of dispensaries and commercial grow of medical marijuana.

The MMRSA exempts from the licensing requirement, any "qualified patient" who suffers from a "serious medical condition" (also defined by statute) who has a valid ID issued by a licensed physician. The personal use exemption under the MMRSA allows cultivation by a "qualified patient" of up to 100 square feet (either outdoors or indoors as it doesn't specify) or a "primary care giver" as defined by statute who may have up to 5 "qualified patients" under his or her care, up to 500 square feet for cultivation, or 100 square feet per "qualified patient" for 1 to 4 patients (either outdoors or indoors as it doesn't specify).

The MMRSA itself adds certain provisions which increase the regulations imposed upon licensed physicians and is an effort to curb or eliminate abuses that have gone on under the existing regulatory scheme since the enactment of the "Compassionate Use Act" (CUA) in 1996. The CUA was implementing legislation because the voters in 1996 passed a statewide initiative authorizing the use of medical marijuana under certain prescribed conditions and that use if done pursuant to the CUA (and now the MMRSA after 1/1/16) is an affirmative defense to a criminal prosecution for unlawful possession of marijuana.

As noted by the staff report, the California Supreme Court has held that cities, under their police power, have the authority to ban all cultivation even for personal under the CUA and there is nothing in the MMRSA which limits the authority of the Cities to ban all cultivation even after enactment of the MMRSA. Staff is correct in this assertion. But I will state why the authority to do should not be a substitute for a full-fledged policy discussion by the City to refrain from doing so as Cities have the affirmative right to consider preserving a personal use exemption where no license is required consistent

with the MMRSA. And many Cities across the State do not ban dispensaries and many will be working within the MMRSA and not opting to ban all cultivation even if it has the police power to do so. The CUA sets forth strong policy reasons why the seriously medical ill patient has a right to relief. That interest of the seriously medically ill patient needs to be considered and weighed by Council notwithstanding the legitimate concerns raised by the Police Chief and staff over criminal diversion and threats to public safety and health.

Here are my objections and some other approaches the City Council could pursue.

1. The 3/1/16 deadline by City Staff as the stated rationale offered for considering urgency legislation on a fast track basis when it was presented to PC on December 10 and now to Council in the first Council meeting of 1/5/16 after the holidays. The City Staff report states that if the Council does nothing then the State will be able to license commercial growers as the sole licensing authority with no further local control over the matter in the City of Fremont.

    a. The 3/1/16 deadline only relates to the licensing of dispensaries and the licensing of *commercial growers* not to personal use by a "qualified patient" under the personal use exemption of the MMRSA *which does not require a license*. The 3/1/16 deadline therefore is completely irrelevant and must not be used as a justification to ban all personal use within the exemption provided by the MMRSA or the more limited exemption recommended by the Planning Commission.

    b. The 3/1/16 deadline language was a drafting error in the MMRSA. This was acknowledged by the drafters and is known to City Staff. A recent article in the LA Times on 12/19 said that there would be cleanup legislation to correct this error and all stakeholders, including the Governor's office, said that such legislation will be adopted taking this issue off the table. So, there is no need for urgency legislation for the City to consider at this time. http://www.latimes.com/politics/la-me-pol-sac-1219-pot-deadline-story.html

    c. Even if Staff reiterates that it is better to be "safe-rather-than-sorry" citing the recommendation of the California League of City to act now with urgency legislation, there is an ironclad argument that the deadline even if it remained in effect *would not allow the State to be the sole licensing authority for dispensaries in the City* since we already have a complete ban in place. There is an ironclad argument that *the State would not be the sole license authority commercial growers* (which are a minimum of 100 square feet or more) if the City Council adopts PC recommendation as we on PC already agreed with staff to extend the ban indoors as well as outdoors. There is also a defensible argument that if the Council simply tabled the City staff proposal until the State acted to enact clean-up legislation and even if for some reason the 3/1/16 deadline remained in effect and was not changed by the State (however unlikely), the State would not have sole licensing authority as we

have already significantly regulated and banned most cultivation of any kind in the City of Fremont. I read that provision of the MMRA conferring sole licensing authority to the State to arise only in the limited instances where a city has done nothing to regulate marijuana at all. That is no longer true after the City adopted the 2014 Ordinance.

d. Alternatively, under the most risk-averse "safe-rather-than-sorry" approach, the City Council could extend the ban under the 2014 Ordinance to all commercial grows either indoors and outdoors so as to preclude the State from being the sole licensing authority. And table a discussion whether the Council should consider a ban for personal use to a later date and in what manner.

2. To highlight an earlier point I have made: The fact that the City has the police power to enact a complete ban does not mean it is required to do so. And there is nothing in the MMRSA or in the 3/1/16 deadline that requires the City to enact a complete ban even for personal use where the MMRSA's personal use exemption explicitly authorizes cultivation without a license for a "qualified patient" who complies with the exemption.

3. The Thane Court example and other outside grows are already illegal and do not justify a complete ban. Part of the presentation at PC and undoubtedly at Council will be blow-ups of the massive grows on Thane Court. By virtue of the 2014 Ordinance those outdoor grows are already illegal and nothing about the 3/1/16 deadline or the MMRSA gives more tools to the police than they already have to ban such outdoor grows. In fact, in my opinion, the MMRSA strengthens the 2014 Ordinance and adds another tool as the grower would not be eligible for a State license. The police would readily establish an illegal grow under our existing 2014 Ordinance and now under the MMRSA by finding that the grow was unlicensed!

4. Indoor commercial grows that are unlicensed should be illegal but that stated purpose in the Staff's proposed ZTA and ordinance does not require banning all growths for personal use. As previously stated, PC recommendation left in place the staff recommendation to ban all indoor grows for commercial purposes and would make illegal all indoor grows in excess of 50 square feet.

5. Staff said a complete ban is required as there are no "objective measures" for determining whether a grow is illegal. Respectfully, in my opinion, this is not true. The State, with the benefit of legislative hearings and public testimony from various stakeholders came up with what is an objective measure in defining the personal use exemption where no license is required so long as the personal cultivation for personal use does not exceed 100 square feet. PC's recommendation of 50 square feet and the other prohibiting language I introduced into our motion borrowed from the MMRSA (i.e. the qualified patient cannot resell or donate or otherwise distribute the marijuana to anyone else) would provide new and better tools necessary to the Fremont PD to distinguish between illegal and permissible grows.

6. A complete ban undermines our General Plan goal of sustainability. As an overarching policy in our plan, Chapter 1 is devoted to Sustainability. Our PC recommendation falls within that goal, including allowing an app order from authorized dispensaries. A complete ban undermines our goals of sustainability that permeate our General Plan. Qualified patients, if they are well enough to do so, or their primary caregivers, will need to drive to San Jose or to dispensaries in unincorporated Alameda County.

7. A complete ban actually could increase and not decrease criminal activity and undermines public health. An argument raised by other Commissioners was that a complete ban has the same unintended consequences of actually increasing rather than decreasing criminal activity. This turns all "qualified patients" who do not have other easy means of accessing legal medical marijuana from buying on the street, having someone other than a primary care giver do so, or simply violating the complete ban. Why turn qualified patients who have a "serious medical condition" into potential criminals?

8. Marijuana is going to be legalized. Commissioner Dorsey raised the point that an initiative will likely be on the ballot in November and Lieutenant Governor Newsome supports legalization. Given the increased sales tax revenues witnessed by the State of Washington and the State of California and the allowance for recreational marijuana in Oregon, I too think the chances of success are likely. I did not raise the argument myself as I would need to see the language of a ballot initiative to determine the nature and extent to which local jurisdictions would retain the authority to regulate or even ban use within their city limits. I felt there were enough arguments that supported our proposed carve-outs without the specter of where we may be as early as 2017 as a State but it is certainly worth thinking about.

9. The PC Ban is a Conservative Approach That Balances The Right of Californians Statewide With Local Control: At the conclusion of the public hearing before we voted, I read into the record the State policies underlying the CUA. Californians do have a right to medical marijuana. On the other hand cities do have the right to override the right of citizens to medical marijuana within City limits. Neither the MMRSA nor does the 3/1/16 erroneous "deadline," as I mentioned previously, do not compel the City to ban all personal use in Fremont even if the City is authorized to do so. The approach taken by PC is far more conservative than the personal use exemption allowed under the MMRSA. (50 feet versus 100 feet and no authorization for primary care givers to grow up to 500 square feet under PC's proposal). And the carve-out for using a platform such as an app for a Fremont resident to order from an authorized dispensary is also a limited conservative approach. Nowhere in the Staff Report is there any presentation on the public policy arguments underlying the CUA or the MMRSA. From the point of view of the Police Chief, he will tell you that he has yet to see a grow in Fremont that is not otherwise illegal (or should be) and that fraud pervades the claimed right of qualified patients procuring easily obtained IDs by questionable methods who contend they are cultivating for personal use in all instances. I respect the views of the Chief and understand his department has a vital role to keep our residents safe. All I would say respectfully in reply is that by definition what comes on his radar screen are the most egregious instances of abuse that do demand

an enforcement response. And the MMRSA and even our limited but well-defined personal use exemption which tracks the MMRSA do give the Fremont PD additional tools to enforce illegal activity. But I would venture to say that an individual who is truly qualified does grow legally in our City and should be able to do so without fear of criminal prosecution or citation. Nor should qualified patients have to rely on the City turning a blind eye to a limited grow as assurance enough. A complete ban is a complete ban under our Municipal Code. The rights of Fremont residents to enjoy the rights of other California citizens throughout the State of California should be recognized explicitly under our Municipal Code and would be if the City adopted PC's recommendation. The City should be on record as validating the rights, albeit in a limited way, to grow or obtain medical marijuana by qualified patients for personal use only.

10. Other Approaches To Staff Recommendation That the City Council consider other than a complete ban: As previously mentioned:

    a. Adopt PC's recommendation which of course I supported and recommended;

    b. Adopt a limited extension of the 2014 Ban to all commercial grows outdoors and indoors and table consideration of a personal use exemption so that the State personal use exemption would apply up to 100 square feet/500 square feet for primary caregivers, thus allowing later consideration by Council with an opportunity for all stakeholders including medical marijuana patients the opportunity to weigh in on this ordinance; or a third broader approach:

    c. Have Staff return on a date certain (6 months/a year?) to Council for a comprehensive review of the 2006 Ordinance banning dispensaries, the 2014 Ordinance and now whatever is adopted by City Council on January 5, 2016 for a comprehensive review in light of the enactment of the MMRSA. This was well beyond what was before us as a ZTA for Planning Commission on December 10, but one important feature of the MMRSA is the explicit authority of cities and counties to tax dispensaries within their jurisdictions. Ironically, on December 10 when the matter was presented to PC, the Alameda County Board of Supervisors adopted regulations consistent with the MMRSA for the dispensaries that are already allowed to operate legally within unincorporated Alameda County. I believe the County Board also authorized commercial grows of medical marijuana. The MMRSA has also conferred upon appropriate State administrative agencies the task of adopting more strenuous and enforceable regulations to make cultivation more environmentally sound, including removing pesticides and other growing practices that are more environmentally sensitive. Long Beach for example is one city that has taken a completely different approach in the light of the MMRSA: it recently passed an ordinance allowing up to 7 dispensaries in its City as a major driver for new general fund sales tax revenue to fund needed City services. Because of the 2014 Ordinance and now the push for a complete ban, the Council at present is not considering the even

broader policy implications of trying to work within the MMRSA. The business community and representatives from the licensed dispensaries or even licensed commercial growers from outside the City to be part of the public debate. Again, for now, I supported PC recommendation because all of the foregoing in this third approach was outside the purview of PC's consideration and I recognized that the ban on dispensaries has been embedded in the FMC for 10 years. But the regulatory landscape is changing rapidly particularly with the right of Cities to tax dispensaries, a matter that would be within primarily if not exclusively the province of the Council and not PC to consider.

If you have any questions, do not hesitate to contact me.

Happy New Year!

Dave Bonaccorsi